

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

James Kevin Kergil,)
Petitioner)
)
v.) Case No. 12-cr-00152-CM
)
United States of America,)
Respondent.)
)

**DEFENDANT JAMES KEVIN KERGIL'S MOTION FOR RECONSIDERATION
PURSUANT TO LOCAL RULE 49.1(d)**

NOW COMES James Kevin Kergil, the Defendant in the above-captioned case to petition this Honorable Court to reconsider its August 18, 2017 decision pursuant to Local Criminal Rule 49.1(d), concerning my motion pursuant to 18 U.S.C. §3582 to reduce my sentence because of the changes in the Sentencing Guidelines concerning the amount of loss in "White-Collar" crimes (Amendment 792), and my role as a minor player in the "*Binday*" scheme (Amendment 794).

PRELIMINARY STATEMENT

First and foremost, I want to thank the Court for ruling on my motions and ordering the government to respond to my 2255 Petition. My fear was that my motions had been lost in the *Binday* shuffle. As the government noted, Mr. Binday is up to his seventh or eighth attorney in this case, while I have had only one and I now am submitting these motions *pro se*. Second, I did not receive notice of the Court's decision until this week and I realize there is a 14 day limit on Local Rule 49.1(d), which is why I am having friends outside of the prison send this in because there is a big inspection happening at Canaan and I am currently unable to enter our unit.

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Third, I wish to draw the Court's attention to not only Judge Lynch's opinion for the Second Circuit in *United States v. Binday*, 804 F.3d 558 (2d Cir. 2015), but also other recent Second Circuit cases that the Court may have overlooked, and testimony that the Court heard but might have forgotten. The evidence presented at trial was clear and unequivocal, Mr. Binday controlled the investors, the applications, and the insureds. For my efforts in the so-called "Binday Scheme", I received only \$600,000 in compensation for services rendered to the Binday Agency. The alleged crime was depriving the carriers of their right to control their assets by depriving them of allegedly valuable economic information. The situations that Your Honor refers to in the decision are people that were friends of mine that I actually helped to benefit from the policies on their lives. If someone like Joseph Collins can receive only a year for the billion dollar REFCO fraud (see *United States v. Collins*, 581 Fed. Appx. (2d. Cir 2014)), and Raj Gupta could receive only two years for the \$350 million insider trading scandal (see *United States v. Gupta*, 747 F.3d 111 (2d Cir. 2014)), then I feel that I have been over-sentenced by a wide margin, and would respectfully ask this Court to grant my Motion for Reconsideration and reduce my sentence to two years based on Raj Gupta, who was just featured in a *Wall Street Journal* article this past week now that he is out of prison.

I. POINTS OVERLOOKED BY THE COURT

Judge Lynch, in writing for the Second Circuit, makes it clear that the money or property sought by Binday was the commissions issued on the policies, and Judge Lynch also makes it clear if the *Binday* scheme was just getting the carriers to issue policies they might not normally issue, that would not be mail or wire fraud:

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Reg. No. 66387-054
Petitioner *Pro Se*
Incarcerated Inmate
FPC Canaan
P.O. Box 200
Waymart, PA 18472

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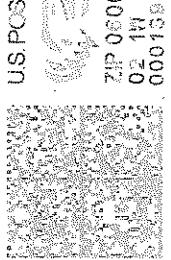
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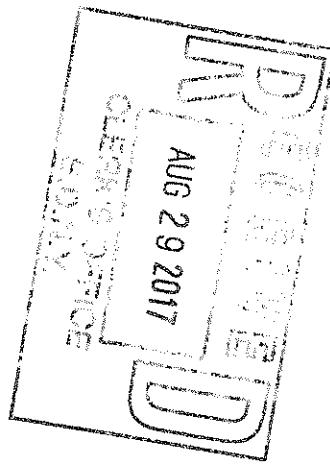
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P.O. Box 200

Waymart, PA 18472



Joseph Castagno
10 Tower Lane Suite 100
Avon, CT 06001



Chris Dutton

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Clerk of the Court
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312